APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DECIDED MARCH 8, 2005

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 02-1122

HOLLIDAY AMUSEMENT COMPANY OF CHARLESTON, INCORPORATED; WARREN P. HOLLIDAY,

Plaintiffs-Appellants,

v.

STATE OF SOUTH CAROLINA; GRADY L. PATTERSON, JR., in his official capacity as Treasurer of the State of South Carolina; JIM HODGES, Governor of South Carolina; CHARLES M. CONDON, Attorney General; ROBERT M. STEWART, individually,

Defendants-Appellees.

Appeal from the United States District Court
for the District of South Carolina, at Charleston.
C. Weston Houck, District Judge.
(CA-01-210-2-12)

Argued: October 29, 2002

Decided: March 8, 2005

Before WIDENER, WILKINSON, and KING, Circuit Judges.

Appendix A

Vacated and remanded with instructions by published opinion. Judge WIDENER wrote the opinion, in which Judge WILKINSON and Judge KING concurred.

OPINION

WIDENER, Circuit Judge:

The plaintiffs are Warren P. Holliday and Holliday Amusement Co., Inc., of which Warren Holliday is the sole owner and operator (Holliday). On January 19, 2001, Holliday filed a complaint in the United States District Court for the District of South Carolina, Charleston Division alleging that South Carolina's enactment and enforcement of 1999 S.C. Act No. 125, now codified as S.C.Code Ann. § 12-21-2710 (2000) (the Act), destroyed Holliday's business, resulting in an unconstitutional taking of his property in violation of the Constitution and 42 U.S.C. § 1983. Holliday sought declaratory and injunctive relief, or, in the alternative, damages arising out the unconstitutional taking. On December 21, 2001, the district court dismissed the action based on its finding that the court lacked subject matter jurisdiction because the major issues of the case had previously been litigated in *Westside Quik Shop, Inc. v. Stewart,* 534 S.E.2d 270 (2000), *cert. denied,* 531 U.S. 1029 (2000), thereby divesting the district court of jurisdiction under the *Rooker-Feldman* doctrine.

Because we believe that *Johnson v. De Grandy,* 512 U.S. 997 (1994), decided that the *Rooker-Feldman* doctrine does not apply when the party asserting the claim in federal court

was not a party to the state proceedings, and because the subsequent Supreme Court and Fourth Circuit cases citing *Johnson* have continued to uphold this standard, we vacate the district court's decision.

I.

Since 1976, Warren Holliday has owned and operated Holliday Amusement Co., Inc. in South Carolina, in which he sold video gaming machines throughout the State. On July 1, 1999, the State of South Carolina enacted S.C. Act No. 125, which made possession of video gaming machines illegal after July 1, 2000, and subjected the machines to forfeiture and destruction by the State. S.C.Code Ann. § 12-21-2710 (2000). At the time the Act went into effect, Holliday owned 532 operational video gaming machines. Immediately following its enactment, owners and lessees of video gaming machines filed suit in a South Carolina state court challenging the constitutionality of the Act. Holliday was not a party in the *Westside Quik Shop, Inc.* litigation, but was a member of the South Carolina Coin Operators Association which filed an amicus brief in the South Carolina court.[1] See Brief of Amici Curiae S.C. Coin Operators Ass'n, Inc., *Westside Quik Shop, Inc. v. Stewart,* 531 U.S. 1029 (2000) (00-433). The plaintiffs in *Westside Quik Shop, Inc.* sought an injunction against enforcement of the Act, claiming that it effected an unconstitutional taking of their property

1. Holliday claims that he could not have been a party to the *Westside Quik Shop, Inc.* litigation because his claim would not have been ripe for state court review during the pendency of that litigation. Appellant's Brief at 5, *Holliday Amusement Co. v. South Carolina,* 00-1122.

without just compensation. *Westside Quik Shop, Inc.*, 534 S.E.2d at 271.

The South Carolina Supreme Court found that the Act did not constitute an unconstitutional taking without just compensation, and because that court did not find a Constitutional violation, it summarily disposed of the plaintiff's 42 U.S.C. § 1983 claim. *Westside Quik Shop, Inc.*, 534 S.E.2d at 275. Thus, the court refused to enjoin enforcement of the Act. The Act went into effect as of July 1, 2000, as codified under S.C.Code Ann. § 12-21-2710.

On January 19, 2001, Holliday brought this action in federal district court, claiming that enactment and enforcement of the Act destroyed his business, resulting in millions of dollars of uncompensated loss, which constituted a taking in violation of the U.S. Constitution and 42 U.S.C. § 1983. He sought declaratory and injunctive relief, or, alternatively, damages arising out of the alleged uncompensated taking.

After reviewing the record of the *Westside Quik Shop, Inc.* case, the district court granted the motion to dismiss for lack of subject matter jurisdiction because it held the *Rooker-Feldman* doctrine applied. Holliday appealed. We vacate and remand.

On appeal, Holliday raises as the following principal issue that the *Rooker-Feldman* doctrine is inapplicable because Holliday was not a party to the *Westside Quik Shop, Inc.* litigation. He argues that he could not have been because his injury did not arise until after the South Carolina Supreme

Court rendered its decision to enforce the Act, and Holliday's lawsuit is ripe for federal court review and federal court ripeness requirements do not implicate the *Rooker-Feldman* doctrine.

Expressing no opinion on the merits, we review de novo the district court's dismissal of Holliday's claims for lack of subject matter jurisdiction. See *Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir.1999); *Guess v. Bd. Of Med. Exam'rs of State of N.C.*, 967 F.2d 998, 1002 (4th Cir.1992).

II.

The *Rooker-Feldman* doctrine is a jurisdictional rule providing that lower federal courts generally cannot review state court decisions; rather, jurisdiction "lies exclusively with superior state courts, and, ultimately, the United States Supreme Court." See *Allstate Ins. Co. v. W. Va. State Bar,* 233 F.3d 813, 816 (4th Cir.2000). See also *District of Columbia Ct.App. v. Feldman,* 460 U.S. 462, 482-86 (1983); *Rooker v. Fid. Trust Co.,* 263 U.S. 413, 415-16 (1923). Under this doctrine, federal district courts are barred from considering issues already presented by a party and decided by a state court and also are barred from hearing Constitutional claims that are "'inextricably intertwined with' questions [so] ruled upon by a state court." *Plyler v. Moore,* 129 F.3d 728, 731 (4th Cir.1997). A federal claim is considered to be "inextricably intertwined" with a state court judgment when "the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." *Allstate Ins. Co.,* 233 F.3d at 819.

Appendix A

The first argument that Holliday asserts is that *Rooker-Feldman* is inapplicable because Holliday was not a party in the *Westside Quik Shop, Inc.* litigation. The Supreme Court decided this issue in *Johnson v. De Grandy,* 512 U.S. 997 (1994) in favor of Holliday's argument, and neither any Supreme Court nor a fourth circuit decision since *Johnson* has lessened the impact of that holding.

In *Johnson,* separate groups of Hispanic and black voters claimed that Florida's reapportionment plan establishing legislative districts for the state Senate and House unlawfully diluted the voting strength of Hispanics and blacks in violation of § 2 of the federal Voting Rights Act of 1965. In a review required by the State Constitution, initiated by the Florida Attorney General, the Supreme Court of Florida, by declaratory judgment, held the plan valid under federal and state law. *In re: Constitutionality of SENATE JOINT RESOLUTION 2G, SPECIAL APPORTIONMENT SESSION,* 597 So.2d 276 (Fla.1992). The Florida court, however, also acknowledged that time restraints prevented a full review and authorized any "protestor" to bring a Voting Rights Act challenge in that court. The plaintiffs, however, chose to bring their § 2 claim in federal district court. The United States also filed a similar complaint in the district court, alleging a § 2 violation. After consolidating the actions, the district court found in favor of the plaintiffs. *Johnson,* 512 U.S. at 1001-04. On appeal, the Court rejected the State's argument that the claims of the United States should have been dismissed under the *Rooker-Feldman* rule because they had already been litigated before the Supreme Court of Florida. *Johnson,* 512 U.S. at 1005-06. Accordingly, the Court denied the State's argument that the federal

government's § 2 challenge should be dismissed under the *Rooker-Feldman* doctrine. The Court explained that "because the United States was not a party in the state court," the *Rooker-Feldman* doctrine did not apply and thus the United States' claim was not barred.

The Supreme Court in *Johnson* could hardly have stated more clearly that the *Rooker-Feldman* doctrine did not apply other than to parties in the state proceedings. And in the 14 subsequent Supreme Court cases which cite the *Johnson* decision, none dilute this requirement.[2] In the case at hand, Holliday was not a party to the *Westside Quik Shop, Inc.* state litigation.

This court also has not watered down that aspect of the *Rooker-Feldman* discussion found in *Johnson.* We have cited *Johnson* nine times, and have not disturbed the requirement of participation in the state proceeding.[3] In particular, two

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2. See *Vieth v. Jubelirer,* 541 U.S. 267 (2004); *Georgia v. Ashcroft,* 539 U.S. 461, 473, n. 1 (2003); *Reno v. Bossier Parish Sch. Bd.,* 528 U.S. 320, 368 (2000); *Lopez v. Monterey County,* 525 U.S. 266, 280 (1999); *Lawyer v. DOJ,* 521 U.S. 567, 570 (1997); *Abrams v. Johnson,* 521 U.S. 74, 92 (1997); *Reno v. Bossier Parish Sch. Bd.,* 520 U.S. 471, 480 (1997); *Bush v. Vera,* 517 U.S. 952, 979 (1996); *Shaw v. Hunt,* 517 U.S. 899, 913 (1996); *Morse v. Republican Party,* 517 U.S. 186, 232 (1996); *City of Bridgeport v. Bridgeport Coalition for Fair Representation,* 512 U.S. 1283, 1283 (1994); *Tyus v. Bosley,* 512 U.S. 1249 (1994); *McWherter v. Rural W. Tenn. African-American Affairs Council,* 512 U.S. 1248, 1248 (1994); *Holder v. Hall,* 512 U.S. 874, 908 (1994). We hasten to add that these citations refer to the merits of *Johnson,* not *Rooker-Feldman.* The fact remains that the Supreme Court has not altered its rule.

3. See *Hall v. Virginia,* 385 F.3d 421, 426 (4th Cir.2004); *Shooting Point, L.L.C. v. Cumming,* 368 F.3d 379, 383 (4th Cir.2004); (Cont'd)

cases from this court specifically state that the *Rooker-Feldman* doctrine is inapplicable in instances in which the person asserting the claim in federal court was not a party to the state proceeding. See, e.g., *Barefoot v. City of Wilmington,* 306 F.3d 113 (4th Cir.2002); *Gross v. Weingarten,* 217 F.3d 208 (4th Cir.2000).

In *Barefoot v. City of Wilmington,* this court held that the district court had jurisdiction with respect to litigants who were not parties to a state court proceeding, but held that the *Rooker-Feldman* doctrine barred suit by those who were parties because they "had a 'reasonable opportunity' to litigate the constitutional issues in state court." *Barefoot,* 306 F.3d at 121 (citations omitted). In *Barefoot,* several plaintiffs brought suit in a North Carolina court against the city of Wilmington, alleging that it had failed to comply with North Carolina's annexation statutes. After the state court decided that the City had complied, some of the same plaintiffs who were parties to the state court proceeding and a number of new plaintiffs brought suit in federal court alleging that the annexation statutes were unconstitutional. *Barefoot,* 306 F.3d at 121. We decided that the plaintiffs who had been parties

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(Cont'd)

United States v. Charleston County, 365 F.3d 341, 345 (4th Cir.2004); *Am. Reliable Ins. Co. v. Stillwell,* 336 F.3d 311, 316 (4th Cir.2003); *Vulcan Chem. Techs., Inc. v. Barker,* 297 F.3d 332, 338 (4th Cir.2002); *Gross v. Weingarten,* 217 F.3d 208, 218, n. 3 (4th Cir.2000); *Brown & Root, Inc., v. Breckenridge,* 211 F.3d 194, 198 (4th Cir.2000); *Lewis v. Alamance County,* 99 F.3d 600, 604 (4th Cir.1996); *Cane v. Worcester County,* 35 F.3d 921, 925 (4th Cir.1994). *Hall, Charleston County, Lewis* and *Cane* do not mention the *Rooker-Feldman* question, the others do.

in the state suit were barred by the *Rooker-Feldman* doctrine because they could have brought their Constitutional claims in the state court proceeding, and thus were barred from presenting this issue to the federal court. *Barefoot,* 306 F.3d at 121. Those plaintiffs who were not parties in the state court proceeding, however, were allowed to bring their suit. "Claims by individuals not party to the state court proceedings, however, are not barred." *Barefoot,* 306 F.3d at 120.

The case of *Gross v. Weingarten* arose out of a state receivership in which the plaintiff challenged in a subsequent case in the federal district court the admission of certain evidence that was contradictory to a holding in the state receivership proceeding. *Gross,* 217 F.3d at 217-18. This court found that because the defendants who were offering the evidence were not parties to the state proceeding, they were not bound by the holding of the receivership proceeding and were not barred by collateral estoppel. In so finding, the court, rejected application of *Rooker-Feldman* to bar admission of the evidence because the defendants were not a party to the state court proceeding. *Gross,* 217 F.3d at 218 n.6. Citing *Johnson,* the court stated that "*Rooker-Feldman* does not apply, however, when the person asserting the claim in the federal suit was not a party to the state proceeding." *Gross,* 217 F.3d at 218 n.6.

Both *Barefoot* and *Gross* demonstrate this court's commitment to the requirement that, absent participation in the state proceeding, a *Rooker-Feldman* objection to jurisdiction is not well taken. Moreover, three other circuits have adopted a rule, declining to apply the *Rooker-Feldman*

doctrine when a federal court suit is brought by a party who was not a party in the preceding state court action.[4]

We realize that the wording in *Feldman,* 460 U.S. at 486, that "These allegations [complained of] are inextricably intertwined with the District of Columbia Court of Appeals' decisions, in judicial proceedings, to deny the respondents' petitions," has been variously construed in many cases, as did the district court in this case: "Federal courts are generally barred from not only considering issues actually presented to and decided by [a] state court, but also hearing constitutional claims that are inextricably intertwined with questions ruled upon by a state court as when success on the federal claim depends on a determination that the state court wrongly decided the issues before it." Nevertheless, subsequent to the decision in *Johnson,* the decisions in this circuit have uniformly followed the *Johnson* rule, that a party to the proceeding in the state court may not subsequently request a federal court to examine the same question, but a non-party to the state court proceeding is not so bound. If there is a fact situation in which a federal plaintiff who was not a party to the state proceeding is nevertheless inextricably intertwined with the state decision, we express

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4. See *Bennett v. Yoshina,* 140 F.3d 1218, 1223-24 (9th Cir.1998), *cert. denied sub nom. Citizens for a Constitutional Convention v. Yoshina,* 525 U.S. 1103 (1999); *United States v. Owens,* 54 F.3d 271, 274 (6th Cir.1995); *Valenti v. Mitchell,* 962 F.2d 288, 297-98 (3d Cir.1992); *cf.* Wright & Miller, *Federal Practice & Procedure* § 4469.1 (2002). The Sixth Circuit, in *United States v. Owens,* explained this rational when it stated, "a party cannot be said to be appealing a decision by a state court when it was not a party to the case." *Owens,* 54 F.3d at 274.

no opinion as to that question, but we observe that no such situation has been presented to us, at least since the decision in *Johnson,* which we follow.

The second issue that Holliday asserts is that the *Westside Quik Shop, Inc.* litigation made Holliday's present suit ripe pursuant to the ripeness doctrine, as established under *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City,* 473 U.S. 172 (1985). Holliday makes this argument in an effort to avoid the application of the *Rooker-Feldman* doctrine. Because we have otherwise held that the *Rooker-Feldman* doctrine is inapplicable we do not reach this issue.

The judgment of the district court is vacated and the case is remanded for further proceedings not inconsistent with this opinion.

VACATED AND REMANDED WITH INSTRUCTIONS

APPENDIX B — MINUTE ORDER OF THE DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, CHARLESTON DIVISION FILED DECEMBER 21, 2001

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA,

CHARLESTON DIVISION

Civil Action No. 2:01-0210-12

HOLLIDAY AMUSEMENT COMPANY, INC., AND WARREN P. HOLLIDAY,

Plaintiff,

vs.

STATE OF SOUTH CAROLINA, GRADY L. PATTERSON, JR., in his official capacity as Treasurer of the State of South Carolina, and GOVERNOR JIM L. HODGES, ATTORNEY GENERAL CHARLES M. CONDON, ROBERT M. STEWART, individually,

Defendant.

MINUTE ORDER

This matter was before the Court upon defendants' motion to dismiss.

Appendix B

For the reasons stated from the bench at the conclusion of oral argument, the motion is granted.

IT IS SO ORDERED.

BY DIRECTION OF THE COURT

LARRY W. PROPES, Clerk

By s/ Gail S. Johnson
Gail S. Johnson
Deputy Clerk

Charleston, South Carolina
December 21, 2001

APPENDIX C — EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, CHARLESTON DIVISION DATED DECEMBER 20, 2001 (JUDGE C WESTON HOUCK'S RULING)

* * *

THE COURT: All right. It seems to me that the issues we have before us are very simple. It seems to me very obvious that the *Rooker-Feldman* doctrine applies.

Under *Rooker-Feldman*, as stated by the Fourth Circuit, in *Allstate Insurance Company vs. West Virginia State Bar*, 233 F.3d. 813, . . . federal courts are generally barred from not only considering issues actually presented to and decided by state court, but also hearing constitutional claims that are inextricably intertwined with questions ruled upon by state court, as when success on the federal claim depends upon a determination that the state court wrongly decided the issues before it.

And that's precisely what we've got here. We may have some minor issues in this case that are different from what exists in the *West Side Quik Shop, Inc.* case, which of course is reported at [534 S.E.2d 270]. But the underlying points that are raised in that case are *identical to the issues that will be presented in the instant case.*

Appendix C

And the only way that plaintiff could recover in this case is for the Court to conclude that the major issues decided in *West Side Quik Shop, Inc.* were wrong. And I believe that under the circumstances in this case, that case is controlling. That case calls into play the *Rooker-Feldman* doctrine and causes this court to lack . . . subject matter jurisdiction.

* * * *

APPENDIX D — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, CHARLESTON DIVISION FILED DECEMBER 21, 2001

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Case Number: 2:01-210-12

HOLLIDAY AMUSEMENT COMPANY, INC., and WARREN P. HOLLIDAY,

Plaintiffs,

vs.

STATE OF SOUTH CAROLINA, GRADY L. PATTERSON, JR., in his official capacity as Treasurer of the State of South Carolina, and GOVERNOR JIM L. HODGES, ATTORNEY GENERAL CHARLES M. CONDON, ROBERT M. STEWART, individually,

JUDGMENT IN A CIVIL CASE

[X] **Decision by Court**. This action came to a hearing before the Court, the Honorable C. Weston Houck presiding. The issues have been duly heard and a decision has been duly rendered.

IT IS ORDERED AND ADJUDGED that the defendants', State of South Carolina, Grady L. Patterson, Jr., in his official capacity as Treasurer of the State of South

Appendix D

Carolina, and Governor Jim L. Hodges, Attorney General Charles M. Condon, Robert M. Stewart, individually, motion to dismiss for lack of subject matter jurisdiction is granted and this action is hereby dismissed.

LARRY W. PROPES, Clerk

By s/ Gail S. Johnson
Gail S. Johnson
Deputy Clerk

December 21, 2001

(2)

No. 04-1650

Supreme Court, U.S.
FILED
JUL 8 - 2005
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

STATE OF SOUTH CAROLINA; GRADY L. PATTERSON, JR., in his official capacity as Treasurer of the State of South Carolina; JIM HODGES, Governor of South Carolina; CHARLES M. CONDON, Attorney General; and ROBERT M. STEWART, individually,

Petitioners,

v.

HOLLIDAY AMUSEMENT COMPANY OF CHARLESTON, INC. and WARREN P. HOLLIDAY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Did the court of appeals correctly analyze the *Rooker-Feldman* doctrine in this case, holding as this Court did in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. ___, 125 S. Ct. 1517 (2005), that the doctrine does not bar plaintiffs who were not parties in the state court proceeding from bringing their constitutional claims to federal court?

CORPORATE DISCLOSURE STATEMENT

Holliday Amusement Company of Charleston, Inc. has no parent corporation and no publicly held company owns 10% or more of its stock.

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STATEMENT OF THE CASE

1. From 1976 through July 1, 2000, Plaintiff Holliday Amusements Company, Inc., owned by Plaintiff Warren P. Holliday ("Holliday"), conducted a highly successful business in Charleston, South Carolina as a video gaming operator, arranging for the placement of video gaming machines in various business locations throughout the state. Compl. ¶ 9. As of July 1, 2000, Plaintiff Holliday Amusements owned 532 fully operational video gaming machines, from which it derived substantial income. *Id.* As its President and sole shareholder, Plaintiff Warren P. Holliday, derived his living from, and dedicated substantially all of his labors to, the video gaming business of Holliday Amusements. *Id.* ¶ 12.

2. Since at least 1975, the operation of such video gaming machines had been entirely lawful under the law of the State of South Carolina, subject to licensing and regulatory requirements imposed by the legislature. *Id.* ¶ 10. All 532 video gaming machines owned by Plaintiff Holiday Amusements Company were at all times duly licensed by the State of South Carolina, and operated in full compliance with all of the regulatory requirements imposed by the State. *Id.* In May 2000, Plaintiff Holliday Amusements renewed the licenses for all 532 of its machines, paying a substantial fee to the State of South Carolina of $984,000. *Id.* ¶ 11.

3. In 2001, the State of South Carolina enacted legislation establishing a State lottery or gaming program, by which the State retained all gaming proceeds. S.C. Code Ann. § 59-150-150 (Law. Co-op. 2001); S.C. Code Ann. § 59-150-190 (Law. Co-op. 2001). On July 1, 1999, the legislature of the State of South Carolina passed legislation,

known as "Act 125," outlawing the use of all private gaming equipment. Compl. ¶ 13; Act 125, 1999 S.C. Acts 1319; S.C. Code Ann. § 12-21-2710 (Law. Co-op. 2000); S.C. Code Ann. § 12-21-2712 (Law. Co-op. 1999). Under Act 125, on July 1, 2000, all privately owned video gaming machines became unlawful for the first time in the State of South Carolina, subject to confiscation and destruction, and their possession or operation became a criminal offense, subject to arrest and prosecution. Compl. ¶ 13; Act 125, 199 S.C. Acts 1319; S.C. Code Ann. § 12-21-2710 (Law. Co-op. 2000); S.C. Code Ann. § 12-21-2712 (Law. Co-op. 1999).

4. Defendants' enforcement of Act 125[1] eventually caused Holliday to lose all economically beneficial use of all

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[1] On May 25, 2000, the plaintiffs in *Westside Quik Shop, Inc. v. Stewart*, 534 S.E.2d 270 (S.C. 2000), *cert. denied*, 121 S. Ct. 606 (2000); which included none of the plaintiffs in this lawsuit, filed an action in the Common Pleas Court for Greenville County, South Carolina, Thirteenth Judicial Circuit, seeking a temporary injunction (together with permanent injunctive and declaratory relief) against the enforcement of Act 125, set to take effect on June 30, 2000. The *Westside Quik Shop* Plaintiffs sought to enjoin enforcement of Act 125 on the grounds that such enforcement would result in the taking of those plaintiffs' property rights, in violation of the Just Compensation Clauses of the Fifth Amendment and Article I,

of its video gaming machines, and resulted in a complete cessation of its video gaming business built up over the preceding 24 years. Compl. ¶ 14. As a result, the stock of Holliday Amusements, all of which is owned by Plaintiff Warren P. Holliday, was made entirely worthless. *Id.* ¶ 15.

5. On January 2, 2001, Holliday filed this lawsuit in the U.S. District Court for the District of South Carolina, Charleston Division, seeking compensation for the infringement of its constitutionally protected property rights. Holliday challenged the enforcement and application of Act 125, which destroyed Holliday's business as an

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Section 13 of the South Carolina Constitution and would also violate 42 U.S.C. § 1983. *See Westside Quik Shop, Inc. v. Stewart*, 534 S.E.2d 270 (S.C. 2000), *cert. denied*, 121 S. Ct. 606 (2000).

The *Westside Quik Shop* litigation was an as-applied challenge on behalf of four plaintiffs who sought a declaration from a state court that enforcement of Act 125 would result in the unconstitutional taking of their property. Because of its state-wide implications and importance, the South Carolina Supreme Court took the case in its original jurisdiction. The South Carolina Supreme Court rejected the *Westside Quik Shop* plaintiffs' claims, holding: "We find the forfeiture of plaintiffs' video gaming machines, or their leasehold interest in these machines, is not a compensable taking under either our Federal or State Constitutions." *Westside Quik Shop, Inc. v. Stewart*, 534 S.E.2d 270, 273-74 (S.C. 2000), *cert. denied*, 121 S. Ct. 606 (2000).

unconstitutional taking of private property and violation of 42 U.S.C. §1983. *Id.* ¶¶ 25-32. Holliday sought declaratory and injunctive relief, or in the alternative, damages arising out of the unconstitutional taking. The district court dismissed the action, holding that although Holliday was not a party in the [*Westside Quik Shop, Inc. v. Stewart*, 534 S.E.2d 270 (S.C. 2000)] litigation, the *Rooker-Feldman* doctrine divested it of jurisdiction because "federal courts are generally barred from not only considering issues actually presented to and decided by state court, but also hearing constitutional claims that are inextricably intertwined with questions ruled upon by state court, as when success on the federal claim depends upon a determination that the state court wrongly decided the issues before it." App. to Pet. for Cert. 14a.

6. The Court of Appeals for the Fourth Circuit vacated the judgment of the district court, holding that the *Rooker-Feldman* doctrine applied only "when the party asserting the

claim in federal court was not a party to the state proceedings . . . because subsequent Supreme Court and Fourth Circuit cases citing [*Johnson v. De Grandy*, 512 U.S. 997 (1994)] have continued to uphold this standard, we vacate the district court's decision." *Holliday Amusement Co. of Charleston v. South Carolina*, 401 F.3d 534, 535-36 (4th Cir. 2005); App. to Pet. for Cert. 2a-3a.

SUMMARY OF ARGUMENT

On March 30, 2005, this Court held that the *Rooker-Feldman* doctrine is confined to cases brought by "state-court losers complaining of injuries caused by state-court judgments rendered before the federal district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. ___, 125 S. Ct. 1517, 1521-22 (2005). The decision of the court of appeals for which South Carolina seeks review in this case reaches exactly the same conclusion, although the Fourth Circuit

decision was rendered before the *Exxon Mobil* decision. Here, since neither Mr. Holliday nor Holliday Amusements, Inc. were parties in the State court action, neither Mr. Holliday nor Holliday Amusements, Inc. had any right of appeal of the State case, and neither could be the losing parties in the State court case that South Carolina now says triggers application of the *Rooker-Feldman* doctrine. Thus, South Carolina's attempt to bar Holliday's lawsuit from proceeding in district court lacks merit and does not warrant this Court's review.

ARGUMENT

1. The issue on which South Carolina seeks review in this case was decided by this Court only three months ago in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. ___, 125 S. Ct. 1517 (2005). In *Exxon Mobil*, this Court held that the so-called *Rooker-Feldman* doctrine is narrowly confined, and rejected a broad application of the doctrine to plaintiffs in district court who were not parties to the prior